REMARKS

Withdrawn claims 6-21 and 35 have been canceled by the present amendment, the Applicant reserving the right to file a divisional patent application thereon.

Claims 1-5 and 22-34 have been rejected by the Examiner under 35 USC 102(b) as being unpatentable over U.S. Patent No. 5,954,303 to Wolf et al. In this rejection the Examiner states that Wolf et al. discloses a cover (32) which is stretched and can be molded to a selected contour. The cover prevents leakage and has a backing (16) and disposed within the cover there is a core with a volume of separate, open cell foam particles which are compressible and wherein a liquid can be partially disposed. Further the Examiner alleges that there is a gel (34, made from an oil) between the particles which can enable lubricated movement of the particles with respect to one another.

It is well known that anticipation under 35 U.S.C. 102(b) is established only on a single prior art reference discloses, expressly or under principles of inherency, each and every element of the claimed invention. R.C.A. Corp. v. Applied Digital Data Systems, Inc. 221 USPQ 385(Fed. Cir. 1994).

In the case at hand Wolf et al. does not teach a core comprising a volume of separate particulates and an oil disposed between the particulates, see claim 1 or a core comprising a mixture of compressible particles in a liquid, see claim 22.

The Examiner has stated that a liquid "can" be partially disposed within a volume open dash cel foam particulates. The Applicant submit that "can" does not mean that the Wolf reference has disposed a liquid between the particles. Accordingly the criteria hereinabove set forth for anticipation has not been met.

The Examiner statement that a liquid cool "can" be partially disposed is a factually unsupported opinion. It has been established that factually unsupported opinions of the Examiner do not provide the basis required by the Supreme Court in the Deere case (148 USPQ 459, 1966) for the determination of obviousness under Section 103. The same applies to 35 U.S.C. 102.

The language of 35 U.S.C. 102 that "a person shall be entitled to a patent unless", concerning novelty and obviousness places the burden of proof on the patent office to produce a factual basis for its rejection of the application under Sections 102 and 103. Which such proof is lacking, there is no resolution of doubt in favor of the Patent Office position. In re Warner and Warner 154 USPQ 173, 177 (CCPA 1967). Accordingly the Applicants submits that the Examiner has not made a prima facie case of anticipation.

Further the Examiner has alleged that the gel (34) between the particle "can" enable lubricated movement of the particulates with respect to one another.

The gel taught by Wolf et al. is exactly that, a gel. It is neither an oil nor a liquid a typical gel utilized by Wolf et al. is set forth in U.S. Patent No. 3,676,387 and

is formed into a layer of definite thickness, see column 4 lines 3-6. A quick review of U.S. 3,676,387 reveals that the gel is formed by molding into resilient layers which can receive a twelve (12) pound steel ball with no rebound. See column 3 example 1 beginning at line 41 of U.S. 3,676,384. Certainly such a gel is not capable of enabling any lubricated movement of any particulates disposed therein.

Alternatively in column 4 beginning at line 56 Wolf et al. suggest that a different support material such as an open-cel foam, a closed-cel foam, liquid or particulate filled bags, or pouches, wood, plastic, metal or any other material suitable for supporting wrist of the user may be used. There is however no teaching of the use of particulates suspended within a liquid or an oil as is the structure of the present invention.

In view of the fact that the Examiner has not made a prima facie case of anticipation under 35 USC 102(b) the Applicant respectfully request the Examiner to withdraw the rejection.

In view of the arguments hereinabove set forth it is submitted that each of the claims now in the application define patentable subject matter not anticipated by the art of record and not obvious to ones skilled in this field who is aware of the references of record. Reconsideration allowance are respectfully requested.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned **"Version with markings to show changes made."**

Respectfully submitted,

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I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE U.S. POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, D.C. 20231, ON

Feb 25, 2002

2/25/02
(DATE SIGNED)

WALTER A. HACKLER
REG. NO. 27,792

Version With Markings To Show Changes Made

IN THE TITLE

The title has been amended to read:

CUSHION WITH LUBRICATED PARTICULATES ~~AND METHOD OF MANUFACTURE~~

IN THE CLAIMS

Claims 6-21 and 35 has been cancelled.

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